

House Committee on Criminal Justice
June 9, 2015
HB 4419 – Felony Firearm

Testimony of Citizens Alliance on Prisons and Public Spending

Good morning, Chairman Heise and members of the Committee. I'm Barbara Levine, associate director of CAPPS.

Some of us are actually old enough to remember when the felony firearm law became effective in 1976. There were billboards everywhere that said "one with a gun will get you two". The theory, of course, was that the threat of a mandatory prison term would deter people from committing felonies with guns.

It didn't quite work out that way. While crime rates declined for every category of offense over the last several decades, there is no evidence that the possession of weapons during the commission of felonies declined any faster than the overall average. Because, of course, people don't really think that way when they are committing a crime. They either act impulsively and don't think at all, or they plan not to get caught. What they don't do is look at the law and decide to commit an armed robbery with a knife instead of a gun.

What the law *has* done is:

- Tie the hands of judges who, on the facts of a given case, might believe that something less than a mandatory two-year consecutive sentence is warranted.
- Give prosecutors a very big hammer to use in plea negotiations.
- Contribute significantly to prison expansion by causing some people to go to prison who would not otherwise receive a prison sentence and by lengthening the sentences of people who were prison-bound based on their underlying crimes.

I will leave it to others to address the first two consequences. I would like to make a few quick points about the effect of these felony firearm convictions on the prison population.

According to the MDOC's latest statistical report, in 2013, there were 1,275 prisoners whose longest minimum sentence was for a felony firearm conviction. That is, for the underlying felony during which the gun was possessed, the person received either probation or a minimum sentence of less than two years. What we can't tell from the statistical report is how many people with minimum sentences longer than two years for the underlying felony had those sentences lengthened by the two consecutive years for felony firearm. My guess would be it is in the thousands.

These figures present several problems:

- For those serving only two years, there may not be a lot the MDOC can do for them during that time, given the limited access to many programs.
- Unlike all other prisoners who must worry about presenting themselves favorably to the parole board, people serving a flat two years for felony firearm, with no minimum and maximum, know that parole consideration is not an issue for them. They will serve the same two years regardless of their institutional behavior or their participation in programs. That does not provide a lot of incentive for positive conduct.
- Lengthening sentences by two years for the gun possession helps to explain why the Pew Center for the States found that Michigan's average prisoner length of stay is far in excess of national norms. Yet there is no reason to believe Michigan's citizens are any safer than those of other states.

Pew also explained that even recent, quite sophisticated research has never found a relationship between how long people serve and how likely they are to reoffend. That is, there is no basis in either experience or evidence for believing that mandating two additional years for felony firearm either deters or corrects. We only know for sure that each felony firearm sentence costs taxpayers roughly \$60,000.

We have no way of knowing exactly what the impact of giving judges discretion will be. They could still give minimums of as much as two years; they could still order those sentences to run consecutively. And we don't know how prosecutors will adjust their strategies for plea negotiations. But we do know that the elimination of mandatory minimum sentences for major controlled substance violations in 2003 helped reduce the proportion of new prison sentences for drug convictions from 23 percent in 1990 to 13.4 percent in 2013.

The strong likelihood is that, if HB 4419 is enacted, many people will serve less time or not go to prison at all. This is a good thing for them, for the MDOC and for taxpayers. And there is no reason to believe it is a bad thing for public safety.

Despite the fact that it is well-entrenched in Michigan practice, the felony firearm statute is long overdue for re-examination. We are grateful that Rep. Heise has the vision and the willingness to take the lead on this issue and that so many other representatives, including Reps. Chang, Howrylak and Hovey Wright, have chosen to join him as co-sponsors.

Thank you.